

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 UNITED STATES OF AMERICA,)

4 Plaintiff)

5 -VS-)

6 LAWRENCE J. COSTELLO,)

7 Defendant)

Criminal No. 14-10230-NMG

Pages 1 - 25

8
9 **SENTENCING**

10 BEFORE THE HONORABLE NATHANIEL M. GORTON
11 UNITED STATES DISTRICT JUDGE

12
13 A P P E A R A N C E S:

14 KENNETH G. SHINE, ESQ., Assistant United States Attorney,
Office of the United States Attorney, 1 Courthouse Way,
Room 9200, Boston, Massachusetts, 02210, for the Plaintiff.

15
16 BERNARD GROSSBERG, ESQ., Law Office of Bernard Grossberg,
38 Green Street, Milton, Massachusetts, 02185, for the
Defendant.

17 ALSO PRESENT: Jennifer Broquist, U.S. Probation Officer.

18
19 United States District Court
1 Courthouse Way, Courtroom 4
20 Boston, Massachusetts 02210
March 29, 2017, 2:33 p.m.

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22
23 LEE A. MARZILLI
OFFICIAL COURT REPORTER
United States District Court
24 1 Courthouse Way, Room 7200
Boston, MA 02210
25 (617)345-6787

P R O C E E D I N G S

THE CLERK: This is Criminal Action No. 14-10230, the United States of America v. Lawrence Costello. Will counsel please identify themselves for the record.

MR. SHINE: Your Honor, good afternoon. Kenneth Shine on behalf of the United States.

THE COURT: Good afternoon, Mr. Shine.

MR. GROSSBERG: Good afternoon, your Honor. Bernard Grossberg for Mr. Costello, who is seated here today.

THE DEFENDANT: Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Costello.

THE DEFENDANT: Sorry I couldn't stand.

THE COURT: And Ms. Broquist is here from Probation. Good afternoon to her.

We are here on the sentencing of Mr. Lawrence J. Costello, and I have received and read the Presentence Report, and there are no other writings that I am aware of that were submitted.

MR. SHINE: There were not.

THE COURT: From the defendant?

MR. GROSSBERG: No, your Honor.

MR. SHINE: And I would state, in error, I did not submit something which I should have, and I'll explain that when the appropriate time comes.

THE COURT: All right. Before we start, however,

1 Counsel -- and you have been forewarned about this, but I want
2 to put it on the record -- after careful consideration of the
3 Presentence Report and review of the defendant's criminal
4 history, the Court has decided to reject the plea negotiated
5 between the parties pursuant to Federal Rule of Criminal
6 Procedure 11(c)(1)(C), and hereby informs the defendant that he
7 is entitled to withdraw his guilty plea and to proceed to
8 trial, which we will schedule if he chooses to exercise that
9 right.

10 My reason is as follows: By my calculation, the
11 defendant is clearly a career offender, both as that term is
12 defined in the Sentencing Guidelines and as one would commonly
13 understand the meaning of such a term. The defendant had
14 sixteen prior convictions, some for very serious crimes,
15 including masked armed robbery and assault with intent to
16 murder, that were unscored under the Guidelines before he was
17 convicted in 1998 of the two violent crimes which are clearly
18 predicates for the Guidelines definitions of career offender.
19 He also had twenty-two other charges and/or arrests against him
20 that did not end up resulting in criminal history points.

21 Nevertheless, because the parties apparently
22 negotiated the so-called (C) plea in good faith, believing that
23 the defendant was not going to be classified as a career
24 offender under the Guidelines, I am prepared to impose a
25 sentence that would fall within the Guideline range determined

1 by the offense level agreed to by the parties in their plea
2 agreement but applying a criminal history category of VI, which
3 is required once an offender has been found to be a career
4 offender; that is, Total Offense Level 22, Criminal History
5 Category VI, 84 to 105 months.

6 I will declare a short recess to give the parties an
7 opportunity to consider their options, and when we reconvene, I
8 will either proceed with this hearing or schedule a trial date,
9 with the necessary pretrial deadlines to be determined. We
10 will be in recess for ten minutes.

11 MR. SHINE: Thank you, your Honor.

12 THE CLERK: All rise.

13 (A recess was taken, 2:37 p.m.)

14 (Resumed, 2:46 p.m.)

15 MR. GROSSBERG: Your Honor, Mr. Costello would like to
16 proceed pursuant to what you just outlined.

17 THE COURT: All right, thank you, Mr. Grossberg.
18 Please be seated.

19 Then I understand that the defendant has waived his
20 right to withdraw his plea of guilty and that we are prepared
21 to go forward with the sentence?

22 MR. GROSSBERG: That's correct, your Honor.

23 THE COURT: All right, then we need to proceed to the
24 Presentence Report. There were objections interposed to that
25 report. Objections No. 1 and 2 were the only substantive

1 objections, I believe, Mr. Grossberg, since the remainder were
2 either informational or derivative on that objection. And, of
3 course, that objection has to do with what we were talking
4 about before, whether or not the defendant is to be deemed a
5 career offender under Section 4B1.1. Do you wish to address
6 further that objection?

7 MR. GROSSBERG: No, your Honor. I've been educated
8 through Probation. There's been some discrepancy as to when
9 the 15-year period runs, if it runs from either the date of the
10 offense, the date of the imposition of sentence; and as the
11 Probation Department has found, it runs from the date of the
12 expiration of the sentence, so I am content to accept
13 Probation's finding, your Honor.

14 THE COURT: Thank you, Mr. Grossberg. I know it is a
15 confusing matter, not only for counsel but for the judges as
16 well. But I believe Probation has correctly read the
17 appropriate Guideline, and that indeed the two convictions that
18 we have been dealing with back in 1998 both do qualify as
19 predicates for the career offender, and therefore I'm going to
20 overrule the defendant's Objections 1 and 2 in that regard.

21 Again, I believe the remaining objections were
22 informational. Is that correct, Mr. Grossberg?

23 MR. GROSSBERG: I have nothing further to add, your
24 Honor. There have been revisions made to the PSR in that
25 regard.

1 THE COURT: Okay. And there were no objections from
2 the government. Is that right, Mr. Shine?

3 MR. SHINE: This is possibly the best time for me
4 to -- there were no written objections by the government, your
5 Honor, that's correct, and that is an error. I had conveyed a
6 concern to Probation on a few occasions. I felt that I had
7 properly filed an objection and I did not, so I take full
8 responsibility for that. But with the Court's understanding, I
9 will not -- I'm acceptable what the Court's view of the
10 Guidelines are at this point. I'm wrong, I'm a hundred percent
11 wrong in my view of what I thought I had done. I hadn't done
12 it properly and I made a mistake, and I accept the Court's
13 position and Probation's position and the Court's position.

14 THE COURT: Well, you can state for the record if
15 you'd like to, Mr. Shine, your objection. You know, just
16 because it wasn't made in writing doesn't mean it absolutely
17 can't be considered, but if you wish to speak for the record,
18 feel free.

19 MR. SHINE: If I could, I just think I have to -- in a
20 complete transparency and to benefit Mr. Costello, I would
21 never do anything. In this particular case, the government did
22 not believe Paragraph 53, the offense, fell within the range as
23 a career offender predicate, and therefore in our negotiating,
24 we had not considered that, and it's based upon a couple of
25 things. So the Court can understand, anytime this Assistant

1 U.S. Attorney has a case where there is a possibility of an
2 enhanced penalty, either based upon the designation as a career
3 offender or the designation as an armed career criminal, which
4 are the cases that I primarily handle, I personally, prior to
5 the entry of any plea, even during the charging stages, I go to
6 the courts and I personally pull every docket I can find to
7 verify the information in the docket is accurate. In this case
8 I can honestly -- I will tell you as an officer of the court, I
9 went to the Norfolk Superior Court. I was shown a box with
10 loose paper, and I went through that for a morning, and I can
11 tell the Court that I could not locate the complete docket on
12 this entry.

13 In Norfolk Superior Court in 1998, there were
14 handwritten notes that were given to the actual file, and that
15 became the docket. There was no typing or even other way to
16 transmit it. The docket shows the date of entry and it shows
17 different events as they proceed, and it's missing from April
18 of '98 forward. There's nothing. It's gone. The pages are
19 just -- so there might be five pages in line, and Pages 6, 7,
20 8, 9, and 10, they don't exist. Probation doesn't have them; I
21 couldn't find them. So I couldn't honestly state -- although I
22 would rely upon the BOP record as to what happened, I can't
23 tell you that that's an absolute. Mistakes are made all the
24 time. That's why I double-check it myself, and it didn't
25 exist. So I took the position, if I couldn't find it, I can't

1 count it, and that's why the government -- I'm just explaining
2 why the government took the position that it did on this
3 particular case. And since I couldn't find it and since I
4 couldn't verify any other document -- I could the other
5 documents, and in other cases I find them all the time. I
6 couldn't in this case, so that's why the government took that
7 position. We wanted to -- if we were going to make a mistake,
8 I'd rather make the mistake benefiting the defendant than
9 otherwise.

10 And, trust me, I started this case from day one, and
11 he knows, Mr. Costello knows, I tried as hard as I could to get
12 this case -- I felt he was a career offender, but then when I
13 got to the end when it was ready to go, I couldn't prove it, so
14 I took a knee, as one would say.

15 THE COURT: Do you wish to comment in response?

16 MR. GROSSBERG: Well, I was going to comment later on,
17 Judge, but what happened as to the offense outlined in
18 Paragraph 53 is, Mr. Costello was an inmate at -- I believe at
19 that time it was MCI Walpole -- it's now MCI Cedar Junction --
20 and he was attacked by three fellow inmates in a back stairway
21 on the cellblock on which he was assigned. He ran up to the
22 third tier. It was somewhat of a racial type of attack.
23 Another inmate came out to assist Mr. Costello. There was
24 blood on the tier. The person who was the victim here slipped
25 off the third tier in the blood and went down three levels.

1 The codefendant was charged with Mr. Costello. The codefendant
2 went to trial, was found not guilty.

3 Mr. Costello had just been sentenced for the offense
4 outlined in Paragraph 54, which totals 15 years. He was still
5 held at the Plymouth jail. He arranged to be brought into the
6 Norfolk County Superior Court, and they offered him right then
7 and there a five-year concurrent sentence. And being somewhat
8 pragmatic at that time, not realizing how it would come back to
9 haunt him later on, he accepted the five-year concurrent
10 sentence, gave up his right to trial because it did not affect
11 his sentence in terms of the federal sentence, and he didn't
12 want to enter the Bureau of Prisons system having a case
13 unresolved because that precludes him from any lower-custody
14 status and halfway house, things of that nature. So while he
15 intended to go to trial, just as the codefendant did, he gave
16 up that right, accepting the five years because it was
17 concurrent.

18 So while the conviction counts technically, both
19 Mr. Shine and I had reservations about the nature of that
20 conviction, your Honor, and I'd ask you to take it into
21 consideration when you consider the range, Judge.

22 THE COURT: Thank you, Mr. Grossberg.

23 Did the probation officer have any comment in this
24 regard?

25 MS. BROQUIST: No, your Honor. We don't have any

1 additional information beyond what's in the Presentence Report.
2 As you'll see in Paragraph 53 on the second paragraph, we did
3 note that we don't have a complete docket and that we did
4 receive the disposition from the defendant's CORI record, so
5 that's where that information came from. I have tried to get
6 an updated docket from Norfolk Superior Court but have been
7 unsuccessful.

8 THE COURT: All right, thank you, Ms. Broquist.

9 The Court will nevertheless deny the objections to the
10 establishment of this defendant as a career offender but will
11 take it into account when considering his sentence.

12 Having disposed of the objections to the Presentence
13 Report, we need to make findings with respect to the Guidelines
14 range, and those recommendations appear starting on Page 7 of
15 the Presentence Report. I understand that subsequent to the
16 October date of this report, of course, the 2016 Guideline
17 manual came out, so we're dealing with the most recent
18 Guideline, the 2016 Guideline, and within that Guideline,
19 Section 2B3.1 -- that is, the one that relates to robbery --
20 applies and calls for a base offense level of 20. Because this
21 particular robbery was of a financial institution, under
22 Subparagraph (b)(1) of that same Guideline, a two-level
23 increase is warranted. And, further, because a dangerous
24 weapon was brandished -- and in this case there is no specific
25 evidence that it was a firearm, so dangerous weapon section is

1 called for, and that's Subsection (b)(2)(E) -- it calls for an
2 additional three-level increase in the offense level, yielding
3 an adjusted offense level of 25. And then, based upon the
4 Court's previous ruling, rather than automatically upping the
5 offense level under the career offender Guidelines
6 Section 4B1.1, this Court will deem this or compute this
7 without that enhancement and give the defendant credit for a
8 two-level downward adjustment, therefore yielding a total
9 offense level of 22.

10 Do counsel agree with the calculations made by the
11 Court?

12 MR. SHINE: The government agrees, your Honor.

13 THE COURT: And, Mr. Grossberg?

14 MR. GROSSBERG: I do agree with it, your Honor.

15 MS. BROQUIST: Excuse me, your Honor. Just for
16 verification, is your Honor doing that as a departure or as a
17 finding for the Guidelines?

18 THE COURT: Well, I take it the government is moving
19 for a departure. Is that correct?

20 MR. SHINE: That's correct, sir.

21 THE COURT: Then the Court will accept that joint
22 motion for a departure.

23 MS. BROQUIST: Thank you. So you're accepting the
24 Presentence Report but then departing from that?

25 THE COURT: Yes.

1 MS. BROQUIST: Thank you, your Honor.

2 THE COURT: So technically Ms. Broquist I think is
3 asking me to technically find that under Chapter 4 enhancement,
4 that the offense level should be 34 and the total offense level
5 of 31, but I'm going to treat it when I sentence this defendant
6 as though that enhancement does not apply.

7 Is that understood, Mr. Grossberg?

8 MR. GROSSBERG: Yes, your Honor.

9 THE COURT: Okay. So turning then to the defendant's
10 criminal history, as I have said before, there were, as I count
11 them, sixteen prior convictions that were not scored for
12 reasons of age in most cases, but then the conviction in the
13 Paragraph 53, which was in 1998 for armed assault with intent
14 to murder, yields three criminal history points. And then the
15 conviction described in Paragraph 54, also in 1998, for
16 conspiracy to commit armed bank robbery and armed bank robbery,
17 three additional criminal history points are warranted; and
18 that means the defendant ends up with six criminal history
19 points. And because he committed the instant offense while
20 under the criminal justice sentence for that previously
21 described offense described in Paragraph 54, two additional
22 points are added pursuant to Guideline Section 4A1.1(d).
23 Therefore, the defendant ends up with eight criminal history
24 points and falls in Criminal History Category IV. Again,
25 because of the career offender Guidelines, his criminal history

1 is automatically increased to VI pursuant to Guideline
2 Section 4B1.1(b).

3 Do counsel agree with those calculations?

4 MR. SHINE: The government agrees with the calculations.

5 THE COURT: Mr. Grossberg?

6 MR. GROSSBERG: I do, your Honor, yes.

7 THE COURT: Then that means that technically the
8 Guideline range at 31-VI would be 188 to 235 months, but as the
9 Court has previously described, taking the offense level
10 without consideration of the career offender Guidelines, the
11 range that I am going to use is 84 to 105 months.

12 I will hear recommendations for sentencing, first,
13 from the government, Mr. Shine.

14 MR. SHINE: Your Honor, thank you. I pretty much laid
15 out my view of the case and, hopefully, in an abundance of
16 transparency, how I felt the case had broken down.
17 Mr. Costello has an extensive criminal history record, I'm
18 aware of that, and that was part of the play in our office
19 taking this case for consideration. This was a violent act
20 this particular date with the use of a dangerous weapon. So at
21 this point the government in one respect is going to accept the
22 Court's view. It's a lot higher than the government initially
23 spoke about, but it's still fair and reasonable. I'm going to
24 recommend the low end of 84 months to be followed by five years
25 of supervised release, a mandatory special assessment of \$100,

1 and the restitution to the bank -- I'm sorry, I don't have it
2 in front of me.

3 THE COURT: I have it somewhere here.

4 MS. BROQUIST: It's \$17,687.40.

5 THE COURT: Okay.

6 MR. SHINE: And I make the recommendation based on the
7 factors which I presented to you based upon Mr. Costello's
8 history, but I'm also -- so we entered a plea approximately a
9 year ago. During that period of time, Mr. Costello has written
10 me a number of letters just taking responsibility for what he's
11 done and actually being very forthright. And in my 35-year
12 career, I have not had defendants who have actually contacted
13 me, and I don't think he did it as an attempt to sway my view
14 because he knew what my view was because I met him on day one
15 and I went after him on day one within the bounds of the law;
16 but he kept on pressing upon me that he'd made mistakes in
17 life, and this was another one of his mistakes, and he wanted
18 to end it.

19 Since then, I've become aware of some pretty
20 critical -- his mental health conditions and his physical
21 health condition in terms of suffering a bout with cancer,
22 which he now tells me is in remission, and back surgery which
23 has left him in a wheelchair. He has indicated to me that that
24 surgery has not been successful, and he's probably bound for a
25 wheelchair for an extended period of time. So his physical

1 prognosis is not the best right now. I think 84 months is an
2 extended period of time for him to be incarcerated. Hopefully
3 this will be the last time he will be in our court or see us
4 again. He does have, and I will point to the Court, an open
5 supervised release violation with Justice O'Toole, and the
6 government will be addressing that matter at that time in
7 recommendations. So I think the number of 84 is fair and
8 accurate, and I think it's just in this particular case.

9 Thank you.

10 THE COURT: Thank you, Mr. Shine.

11 Mr. Grossberg?

12 MR. GROSSBERG: Yes, your Honor. Mr. Costello has
13 asked me to make certain that I thank you for the fact that
14 this case has been delayed approximately a year so he could get
15 the necessary medical attention during the past year. And I
16 know we've asked and perhaps we tried the Court's patience in
17 asking for repeated continuances of the sentencing hearing, but
18 what had happened, your Honor, he needed different types of
19 surgery, and that was the basis for the requests.

20 When I looked at the PSR, when I reviewed it again
21 recently, I have to say, in all frankness, your Honor, I am
22 hard-pressed to advocate on his behalf in terms of the
23 Section 3553 factors except for his physical being, his
24 physical and mental health. Several years ago he was diagnosed
25 with ulcerative colitis. Recently that situation developed

1 into full-blown severe Crohn's disease. It was diagnosed
2 further that he has a hole in his colon, which has resulted in
3 his being incontinent in terms of his bowels. Whenever he ate,
4 the food would run through him. He had to constantly go to the
5 bathroom, which was also accompanied by a severe weight loss
6 because he could not hold any food down.

7 You might recall, your Honor, I addressed you several
8 months ago that what was going on at that time, he was being
9 transported every six weeks from the Plymouth jail to the
10 Shattuck Hospital for infusion type of therapy, which is
11 similar to chemotherapy, to treat the Crohn's disease. And
12 that would leave him completely debilitated for three to five
13 days, which was very hard for him to deal with because not only
14 physically but in a jail setting. He tells me, Judge, that he
15 is going to have to continue with the infusion treatments every
16 six weeks for the rest of his life to deal with the Crohn's
17 disease. He is also waiting for a surgery to be scheduled to
18 repair the hole in his colon.

19 Exacerbating his situation is, he suffers from
20 hepatitis C. He's had skin lesions removed from his face and
21 his upper lip. He has been diagnosed with having polyps, which
22 are a sign of cancer, in his throat. Right now they're benign.
23 They're keeping a watch over that situation. He suffers from
24 asthma, and further complicating the matter, he suffers from
25 chronic obstructive pulmonary disease, COPD, for which he takes

1 medication.

2 Further, he has bronchitis, and he's allowed to carry
3 three types of inhalers with him at all times. As a result of
4 the COPD, he developed lung cancer, and he was operated on this
5 past December, I believe the 16th, at the Boston Medical Center
6 where a tumor was removed from his left lung. He's been told
7 now that the cancer is in remission, but he's had two bouts
8 with different types of cancer.

9 Most critically, your Honor, this past December, after
10 waiting two years, he finally received surgery for not
11 herniated disks in his back but two crushed disks. The surgery
12 was performed on December 9 at the Boston Medical Center. It
13 was a very severe operation. I've seen the consent form that
14 Mr. Costello had to sign which indicated to him or informed him
15 of the side effects, including possible death during the course
16 of the operation, it was so severe. Mr. Costello has shown me
17 a -- this is an X ray of his spine. Three rods were inserted
18 in his spine and I think six separate pins. The surgery was an
19 eight-and-a-half-hour procedure. He's now wearing some type of
20 cast around his lower portion of his body.

21 He's been at the Shattuck Hospital for the last five
22 months. He receives physical and rehab therapy. Recently,
23 your Honor, he was told, given the position that he's still in,
24 not able to walk, that the surgery was not successful, that
25 they're going to wait perhaps six or seven months to see if he

1 can regain his ability to walk. If that doesn't happen,
2 Mr. Costello's choices would be to repeat the surgery or to
3 live in a wheelchair.

4 Most critically to him, as part of his surgery, he has
5 suffered nerve damage. On his left foot, three toes are numb.
6 He has no sensation in that part of his foot. On his upper
7 back from his buttocks, he has no feeling; and particularly
8 important, he has no feeling in the ankle joint, and that
9 prevents him from walking. When he's in the hospital, the only
10 way he can walk is with a walker and a wheelchair right behind
11 him in case he has to sit down. He's really not ambulatory.
12 It's envisioned right now that he would spend another seven
13 months in rehab at the Shattuck Hospital, and, if he improves,
14 he would go on, but if he doesn't improve, he'd have to make a
15 decision as to whether or not to have further surgery.

16 This man, your Honor, who's now at 56 years old, has
17 served 22.5 years of his life incarcerated. It is for certain,
18 Judge, that the life that he knew previously, the life that he
19 led previously is not a life that he can go back to. His ways
20 of the past are gone completely. He hopes, as he told me, your
21 Honor, that he would be able to walk again if he improves, with
22 or without the additional surgery.

23 Although the conviction in Paragraph 53 in the Norfolk
24 Superior Court counts as a predicate for career offender, I
25 trust your Honor gets some idea of what type of offense it was

1 in a prison setting and why Mr. Costello resolved it by means
2 of a guilty plea, because he was already sentenced to fifteen
3 years, and most defendants in that situation would jump at a
4 concurrent sentence which would not affect him rather than take
5 his chances at trial.

6 One other thing to note, your Honor, is that as
7 mentioned in the presentence investigation report, shortly
8 after Mr. Costello was arrested in this matter, he was
9 contacted by his son, who he's had no contact with for 30 or so
10 years. He and his son have reconciled. He speaks to his son
11 now, Judge, every day by telephone. His son visits him. His
12 son lives in Long Island in New York. He's in the business of
13 commercial real estate and has offered Mr. Costello a job and a
14 place to live when he's released. As a result of reconciling
15 with his son, he has reconciled with his two daughters, and he
16 speaks to them not quite as often as he does with his son, but
17 he does have contact with his daughters, from whom he has been
18 estranged as well.

19 So the point I'm trying to impress upon the Court is
20 that Mr. Costello is not going to be able to live the life he
21 lived in the past, your Honor. I would ask you most sincerely
22 to impose the low end of the Guidelines. A sentence of 84
23 months, which is seven years, is sufficient for the purposes of
24 punishment and the other purposes of sentencing at this time,
25 especially because of, a result of his physical condition, your

1 Honor.

2 THE COURT: Thank you, Mr. Grossberg. Does the
3 defendant wish to address the Court before sentencing is
4 imposed?

5 THE DEFENDANT: Your Honor, I'd like to say thank you
6 for the time to let me get the operation and everything and the
7 continuances you gave, and I assure you I will not be back in
8 front of this Court again. The system's changed. I've never
9 said I'm done before in my life. I'm done with that life, and
10 I apologize to the Court for being here today. And thank you
11 to Mr. Shine and Mr. Grossberg and you as well, your Honor.

12 THE COURT: All right, thank you, Mr. Costello.

13 Do counsel have any reason why sentence ought not to
14 be imposed at this time?

15 MR. SHINE: I do not, sir.

16 MR. GROSSBERG: No, your Honor.

17 THE COURT: Then I'm not going to ask the defendant to
18 stand as I normally do because I understand your condition.

19 THE DEFENDANT: I wish I could.

20 THE COURT: But, Mr. Costello, you stand convicted of
21 a very serious crime, armed bank robbery during which a
22 dangerous weapon was brandished. But as bad as the crime
23 itself was, the circumstances under which it was committed, you
24 and your cohorts robbed this bank in Attleboro less than one
25 year after you were released from a long term of imprisonment

1 you served for having committed an equally horrendous armed
2 bank robbery in Newburyport in 1998. During that
3 incarceration, you intimidated a potential witness against you
4 in another bank robbery in which you were suspected of
5 participating but weren't charged, and you received twenty-nine
6 disciplinary reports for your criminal conduct while in prison.

7 I can reach no other conclusion than that your
8 rehabilitation is uncertain and that you deserve a lengthy
9 prison sentence to see if that is at all possible. Hopefully,
10 based upon the statement that you just made to the Court, it is
11 possible. Everybody has some redeeming value, and I am hoping
12 that you are showing that today. But specific deterrence is
13 necessary, not only for your sake but also so the public can be
14 protected from your continuous criminal conduct.

15 Pursuant to the Sentencing Reform Act of 1984 and
16 having considered the sentencing factors enumerated in Title 18
17 of the United States Code, Section 3553(a), it is the judgment
18 of this Court that you, Lawrence Costello, are hereby committed
19 to the custody of the Bureau of Prisons to be imprisoned for a
20 term of 84 months. The Court makes a judicial recommendation
21 that you be designated to an institution commensurate with
22 security where the Bureau of Prisons can afford appropriate
23 medical care for your documented medical needs.

24 Upon release from imprisonment, you shall be placed on
25 supervised release for a term of five years. Within 72 hours

1 of release from custody of the Bureau of Prisons, you shall
2 report in person to the district to which you are released.

3 It is further ordered that you shall make restitution
4 to the Bank of America at 505 Pleasant Street in Attleboro,
5 Massachusetts, 02703, in the amount of \$17,687.40. Payment of
6 the restitution shall begin immediately and shall be made
7 according to the requirements of the Federal Bureau of Prisons
8 Inmate Financial Responsibility Program while you are
9 incarcerated and in accordance with a court-ordered repayment
10 schedule during any term of supervised release. All
11 restitution payments shall be made to the Clerk of the United
12 States District Court for transfer to the identified victim.

13 You are to notify the United States Attorney for this
14 district within 30 days of any change of mailing or residence
15 address that occurs while any portion of that restitution
16 remains unpaid. No fine is imposed, as it is deemed you do not
17 have the financial ability to pay a fine in addition to
18 restitution.

19 While under the Probation Office's supervision, you
20 shall comply with the following terms and conditions: First,
21 you shall not commit another federal, state, or local crime.
22 You shall not illegally possess a controlled substance. You
23 shall refrain from any unlawful use of a controlled substance
24 and submit to one drug test within 15 days of release from
25 imprisonment, and at least two periodic drug tests thereafter,

1 not to exceed fifty tests per year, as directed by the
2 Probation Office.

3 You are to submit to the collection of a DNA sample,
4 as directed by Probation Office, and you are to comply with the
5 standard conditions that have been adopted by this Court and
6 are described in the Sentencing Guidelines at Section 5D1.3(c)
7 and which will be set forth in detail in the Judgment and
8 Committal.

9 The following further special conditions apply during
10 your supervised release: You are prohibited from possessing a
11 firearm, destructive device, or other dangerous weapon. You
12 are to pay the balance of any restitution imposed according to
13 a court-ordered repayment schedule. You are prohibited from
14 incurring new credit charges or opening additional lines of
15 credit without the approval of the Probation Office while any
16 financial obligation remains outstanding. You are to provide
17 the Probation Office access to any requested financial
18 information, which may be shared with the Financial Litigation
19 Unit of the United States Attorney's Office.

20 And you are to participate in any program for
21 substance abuse counseling, as directed by the Probation
22 Office, which program may include testing, not to exceed fifty
23 drug tests per year, to determine whether you have reverted to
24 the use of alcohol or drugs. You shall be required to
25 contribute to the costs of services for that treatment based

1 upon your ability to pay or the availability of third-party
2 payment. And you are to participate in a mental health
3 treatment program as directed by the Probation Office. You are
4 required to contribute to the costs of services for that
5 treatment based upon your ability to pay or the availability of
6 third-party payment.

7 It is further ordered that you shall pay to the United
8 States a special assessment of \$100, which shall be due and
9 payable immediately.

10 Mr. Costello, you have a right to appeal this
11 sentence. If you choose to appeal, you must do so within
12 14 days. If you cannot afford an attorney, an attorney will be
13 appointed on your behalf. Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Is there any further business then to come
16 before the Court in these proceedings?

17 MR. SHINE: There is not from the government. Thank
18 you.

19 MR. GROSSBERG: Your Honor, I ask you to consider one
20 point, if you would consider ordering that the restitution not
21 begin immediately. My understanding is that prison inmates who
22 are in Mr. Costello's position, if it's immediate, the Bureau
23 of Prisons withdraws amounts from his canteen institutional
24 account. He gets a very small amount of money from his family
25 just for basic necessities. If your Honor would consider

1 imposing the restitution order to begin upon his release. He
2 doesn't have any income while he's incarcerated, and it has
3 caused problems, I know, for a number of inmates in similar
4 situations.

5 THE COURT: Ms. Broquist, is the information --

6 MS. BROQUIST: Your Honor, we simply ask that it be
7 done immediately, and, as I understand it, it's a percentage of
8 whatever he has in the canteen.

9 THE COURT: That's my understanding, is that it's a
10 percentage of the canteen amount.

11 Mr. Shine?

12 MR. SHINE: No, I agree, it's a percentage of the
13 canteen amount. They don't take his entire canteen.

14 THE COURT: I'm not going to change the order. I will
15 leave that up to the Bureau of Prisons. We're adjourned.

16 MR. GROSSBERG: Thank you, your Honor.

17 MR. SHINE: Thank you, sir.

18 THE CLERK: All rise. The defendant is remanded.

19 (Adjourned, 3:20 p.m.)
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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court Reporter,
do hereby certify that the foregoing transcript, Pages 1
through 25 inclusive, was recorded by me stenographically at
the time and place aforesaid in Criminal No. 14-10230-NMG,
United States of America v. Lawrence J. Costello, and
thereafter by me reduced to typewriting and is a true and
accurate record of the proceedings.

Dated this 22nd day of June, 2017.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER